

Recognition And Entrenchment Of
Treaty And Aboriginal Rights
And Indian Government
Within The
Canadian Confederation

The Federation of Saskatchewan Indians
December 1980

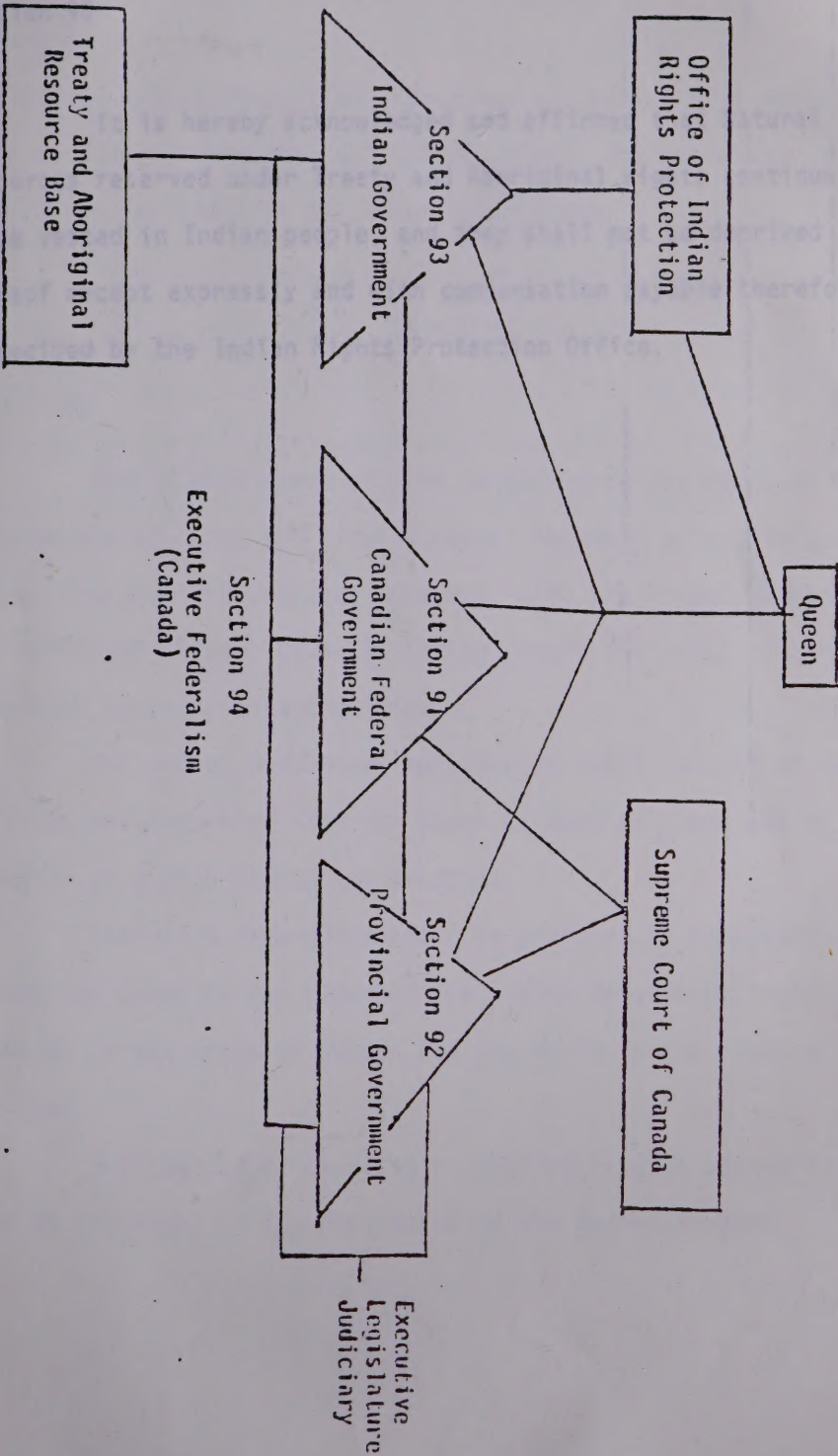
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INDIAN CONSTITUTIONAL POSITION WITHIN CONFEDERATION



Section 94

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Section 96

Indian Rights Protection Office

Section 96

It is hereby acknowledged and affirmed that Natural resources reserved under Treaty and Aboriginal rights continue to be vested in Indian people, and they shall not be deprived thereof except expressly and with compensation payable therefore as decided by the Indian Rights Protection Office.

Section 95

1. Indian Government will be conducted on the basis of tribal administration, with the First Nations' Assembly acting in accordance with Treaty and Aboriginal interests, with the Tribal, District and Provincial Chiefs' Councils acting within the scope of their respective territorial authorities.

2. The Indian Government legislature shall consist of the First Nations Assembly, with the Queen as head of state and as Protector of Indian rights and treaties.

3. Executive federalism shall be promoted by consultation between the Queen in the right of the Indian Government legislature, the Queen in the right of Canada and the Queen in the right of the Provinces.

4. Residual power over Indian matters remains vested in the Queen in the right of the Parliament of the United Kingdom.

Indian Rights Protection Office

Section 94

"The Indian Rights Protection Office has the powers of a superior court to finally determine all matters within the exclusive legislative jurisdiction of Indian Governments."

Executive

Section 95

1. Indian Government will be conducted on the basis of tribal decision-making, with the First Nations' Assembly acting to advance general Treaty and Aboriginal interest, with the Tribal, District and Provincial Chiefs' Councils acting within the ambit of their respective territorial authorities.

2. The Indian Government legislature shall consist of the First Nations Assembly, with the Queen as head of state and as Protector of Indian rights and treaties.

3. Executive federalism shall be promoted by consultation between the Queen in the right of the Indian Government legislature, the Queen in the right of Canada and the Queen in the right of the Provinces.

4. Residual power over Indian matters remains vested in the Queen in the right of the Parliament of the United Kingdom.

12. The appointment of Indian judges including those with superior court status,

13. Property and civil rights of Indians,

14. Any other matters affecting Indians and Indian lands,

Except as otherwise provided by the Indian Government legislature, all laws in force in Canada and the respective provinces shall continue to apply, insofar as they relate to matters within the jurisdiction of the Indian Government legislature, subject nevertheless to be repealed, abolished or altered by the said legislature pursuant to the authority conferred upon it.

ratified by a three-fifth majority of the regional Indian Governments.

2. Band membership, status and citizenship and the incidents of residence on Indian lands.

3. Education, culture and language.

4. Elections.

5. Family law including marriage, divorce, custody, maintenance and adoption.

6. Taxation, both direct and indirect.

7. Hunting, fishing, trapping and gathering.

8. Trade and commerce in relation to Indians and Indian lands, and related Indian matters.

9. The incorporation of companies and bodies.

10. Criminal law and procedure.

11. The administration of justice and the establishment of Indian courts.

Legislative Powers

Section 93B

Notwithstanding anything in this Act (including any other non obstante clause), the Indian Government legislature may make laws applying on or off reserves in relation to:

1. Indian Government constitutions and the amendments thereof, and an amendment will be passed on the recommendation of a majority of the Indian legislature ratified by a three-fifth majority of the regional Indian Governments,
2. Band membership, status and citizenship and the incidents of residence on Indian lands,
3. Education, culture and language,
4. Elections,
5. Family law including marriage, divorce, custody, maintenance and adoption,
6. Taxation, both direct and indirect,
7. Hunting, fishing, trapping and gathering,
8. Trade and commerce in relation to Indians and Indian lands, and related Indian matters,
9. The incorporation of companies and labour,
10. Criminal law and procedure,
11. The administration of justice and the establishment of Indian courts,

ENTRENCHMENT OF TREATY AND ABORIGINAL RIGHTS

Section 93A

"Notwithstanding any provision in the Canada Act or in the Constitution Act or in any other Act, and being cognizant that the solemn undertakings made to Canada's Aboriginal Peoples in the Royal Proclamation of 1763 and in prior and subsequent treaties between such peoples and the Crown are inviolable, it is hereby declared that no law of any Province, and no law of the Parliament of Canada, heretofore or hereafter enacted, shall be interpreted so as to abridge, abrogate, repeal, or extinguish any provisions of a treaty; or any commitments made in the course of negotiations resulting in a treaty; or any commitments made in the course of negotiations resulting in a treaty; or any treaty or aboriginal rights and, without limiting the generality of the foregoing, more specifically, those treaty or aboriginal rights relating to land, government or culture."

Her heirs and successors, we herewith declare that the aboriginal rights, the rights to trust in accordance to treaty, the rights to protection in accordance to treaty, the rights to self-government, the treaty rights of all Indians under treaty, be formally recognized and entrenched between the Indian nation and Great Britain, the Imperial Crown, and that any constitutional amendment, now or in the future, be in accord with the intent of this declaration.

We, the First Nations, accordingly, do hereby proclaim our dedication and commitment to the recognition of our unique history and destiny within Canada by entrenching our treaty and aboriginal rights within the present or a renewed constitution. Only in this way can we truly fulfill the sacred obligation handed down to us by our forefathers for future generations. Anything less would result in the betrayal of our heritage and destiny.

9. The rights of Indian Nations as nations must be entrenched and protected in the Canadian Constitution.
10. In the treaties, our nations place themselves under the protection of the Crown. In establishing this protectorate relationship, they shared some of their powers and they did not give up or surrender their sovereignty.
11. Our treaty rights must be entrenched and protected in the Canadian Constitution.
12. We seek to end our economic dependence on others. To do this, we need enough land and resources to provide an economic base for the present and the future.
13. Our governments have the right to share in all the revenues from this land and its resources. A sound financial base is required for the full operation of any government.
14. Neither the Federal Government of Canada nor any provincial government shall unilaterally affect the rights of our nations or our citizens.

The Federation of Saskatchewan Indians, on the 27th day of November, 1980, affirmed these principles through the following declaration:

As an Indian sovereign nation having the powers to make a binding treaty with the Crown of England,

We do not seek to renegotiate the treaties. We do, however, seek entrenchment of our aboriginal and treaty rights in the constitution, not by the Canadian Parliament, but by the Parliament of Great Britain.

In recent months there has been considerable debate among the Indian nations in relation to the specific mechanism to achieve this goal. The result has been the enunciation of a set of principles by the First Nations Constitutional Conference held in April of 1980, and which was ratified by the 11th Annual National Indian Brotherhood General Assembly in August of 1980. The principles declared:

1. We are nations. We have always been nations.
2. As nations, we have inherent rights which have never been given up.
3. We have the right to our own forms of government.
4. We have the right to determine our own citizens.
5. We have the right of self-determination.
6. ~~We~~, through our governments, shall have full control of our land. "Land" includes water, air, minerals, timber and wildlife.
7. We wish to remain within Canada, but within a revised Constitutional framework.
8. The negotiations to revise the Canadian Constitution shall have full and equal Indian involvement at all levels and stages of negotiations.

Preamble

As the original people of this land, our feelings towards treaty and aboriginal rights differ considerably from those of non-Indians in Canada. To us they represent sacred covenants by which our forefathers agreed, albeit under duress, to permit Europeans merely to co-habit with us on this land. However, the European settlers have consistently acted through their institutions to debase these original understandings. Not being content just to question the extent of our rights, they now frequently engage in astounding debate to actually call into question the very existence of these rights.

This relentless process of attrition of our rights has been effected through the pervasive powers of the Canadian state. Legislators have treated us as objects in a tutelary and paternalistic fashion pursuant to "The Doctrine of Discovery" while ignoring and often overriding the most sacred undertakings. At the same time, the judicial arm of government has also consistently used alien concepts to further distort and eviscerate our heritage. Whereas our forefathers reposed treaty trust in the Crown, the servants of the Crown, the Executive, have marvellously arrogated to themselves the capacity to continue the divestiture of our rights by the implementation of policies heavily biased towards non-Indian interests.

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